

The 25th March, 1982.

No. 9(1) 82-8|Lab|2365.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of Registrar, Kurukshetra University, Kurukshetra.

BEFORE SHRI BANWARI LAL DALAL,
PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK.

Reference No. 241 of 80.

Between

SHRI AZAD SINGH, WORKMAN AND THE
MANAGEMENT OF REGISTRAR, KURUK-
SHETRA UNIVERSITY, KURUKSHETRA.

Present :

Shri R. S. Hooda, for the workman.

Shri S. C. Chawla, for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—vide his order No. ID|54621, dated 24th October, 1980 under section 10(i)(c) of the I.D. Act for adjudication of the dispute existing between Shri Azad Singh, workman and the management of Registrar, Kurukshetra University, Kurukshetra. The term of reference was:—

Whether the termination of services of Shri Azad Singh was justified and in order? If not to what relief is he entitled?

On the receipt of the order of reference notices as usual were sent to the parties. The parties put in their appearance on 16th December, 1980. The parties filed their respective pleadings, on the basis of which the following issues were framed:—

(1) Whether the reference is not maintainable as per the preliminary objection?

(2) As per the term of reference?

The management examined Shri A. N. Sharma, Assistant Registrar, respondent and Shri Kalyan Singh, Head Chowkidar as their witnesses and closed their case on 24th August,

1981. The workman examined himself as his own witness and closed his case on 28th September, 1981. I heard the learned representatives of the parties and have also gone through the evidence oral as well as documentary placed on record. I decide issuewise as under:—

ISSUE NO. 1 :

The management has raised objection in their written statement that the workman ought to have followed the procedure laid down in the university calendar providing for appeal in review. The management has further pleaded that the workman could have got his grievances redressed under these rules and the same was the proper forum available to him. The management has further submitted that the Labour Court has no jurisdiction to decide the present reference and the order of reference was itself bad in law. It is an admitted fact that the workman did not choose the remedy available to him under the university calendar and opted to avail the remedy provided under the I.D. Act. The management has relied on appeals and review rules given in Chapter 8 of the University calendar the extract of which has been marked Ex. MW-11 and also on judgment of Punjab and Haryana High Court dated 22nd October, 1981 in a civil writ petition No. 2686 of 1972.

On the other hand the workman has submitted that he had availed the alternative remedy available to him by raising a dispute under section 2(A) of the I.D. Act and he was not barred by the rules contained in the university calendar, to take such option. He has also relied on decision of the Punjab and Haryana High Court in civil writ petition No. 2136 of 79 which is dated 29th May, 1980. The judgments referred to above relate to the question whether the alternative remedy was available to the petitioner under the relevant rules and if that was so the court will not exercise its writ jurisdiction till the procedure is not exhausted. But the writ petition has been held maintainable if the rules are deficient in providing the alternative remedy. Ex. MW-11 only says that an appeal may lie from any original order passed by the Vice-Chancellor to the Executive Council. It does not say that the appeal shall only lie to the Executive Council and in view of these rules it cannot be held that the workman was incompetent to choose an alternative remedy provided under the I.D. Act. An analogy cannot be

drawn from the judgements referred to above that the workman cannot invoke the provisions of I.D. Act in raising an Industrial Dispute and subsequently government referring the same for adjudication to the Labour Court unless and untill he has exhausted the procedure as laid down in Ex. MW-11. From the judgment of the High Court referred to by the management it is rather envisaged that the alternative remedy to be availed prior to going for writ petition is either to prefer an appeal before the Executive Council as provided under the University Rules Ex. MW-11 or through a reference to the Labour Court under section 10 of sub-section (1) of the I.D. Act by raising a dispute under section 2(A).

In view of the above observations the objection of the management is not sustainable and the reference is held to be valid and maintainable. The issue is accordingly decided against the management.

ISSUE NO. 2:

It has been admitted on both sides that the workman was initially appointed to the post of Chowkidar,—vide Exhibit MW-1 on 21st December, 1977 against leave vacancy for one month on ad hoc basis. Again he was allowed to continue in the leave vacancy of another chowkidar Mange Ram up to 19th February, 1978 under the same terms and conditions,—vide Exhibit MW-2. The workman was again allowed to continue as Chowkidar till further orders against a newly sanctioned post of chowkidar in the general pool of chowkidars on the previous terms and conditions,—vide Exhibit MW-3 dated 18th February, 1978. The services of the workman were terminated for the first time on 16th October, 1979,—vide Exhibit MW-4 which was withdrawn by the management subsequently and the workman remained in service up to 17th May, 1980 when his services were again terminated,—vide order Exhibit MW-3. The workman was charge sheeted,—vide Exhibit MW-5 to which he replied,—vide Exhibit MW-6 by which the workman asked for the record to be supplied to him, to which the management replied,—vide Exhibit MW-7. Thereafter the management terminated the services of the workman. It has also been admitted that no domestic enquiry was held.

The management witness MW-1 Shri A. N. Sharma gave out in his cross examination that

in case of termination of ad hoc employees it was not necessary to pay one month wages in lieu of, notice when it was necessary in cases of regular employees. In the same way it was not necessary to issue charge sheet in case of ad hoc employee but was necessary in cases of regular employees. He further stated that in some cases charge sheet is issued and in others it is not issued and for that very reason it was not necessary to conduct enquiry on the chargesheet and the matter was decided by considering the reply to the charge-sheet. The witness could not give any instance to a specific question whether any workman was terminated without holding an enquiry after issuing the chargesheet to him except in case of Azad Singh. He has also admitted in his cross examination that chargesheet of same nature which was given to Shri Azad Singh was also given to Shri Ram Kumar. The Public Relation Officer conducted the enquiry in case of Shri Ram Kumar who tendered his apology and gave assurance to work properly in future. He was then pardoned.

Another witness Shri Kalyan Singh appeared for the management as MW-2 who deposed that the workman picked up quarrel with him and challenged him alongwith two other persons one was identified to be Ram Kumar. All of them were ready to kill him but two three other persons happened to come to that side on the bicycles. Then they went away by saying that he was fortunate and escaped today, they will with him some other day. He further stated that he reported the matter in writing and took the watch and ward supervisor on the spot, then they ran away. In his cross examination he stated that he did not know whether any enquiry was held on his report. He denied the suggestion as incorrect that he was threatened by the Registrar to make a false complaint against Shri Azad Singh.

From the evidence of the parties and the documents filed by the management it is established that the workman remained in the service of the management from 21st December, 1977 to 17th May, 1980 continuously without any break. According to the terms and conditions contained in the appointment letter Exhibit MW-1 which remained unchanged in Exhibit MW-3. The workman was appointed on ad hoc basis but from Exhibit MW-4 and MW-5 and from the oral testimony of MW-1 Shri A. N. Sharma, it is established that the

workman was treated as a regular though unconfirmed employee of the respondent as one month notice pay and the chargesheet was being issued to the employees other than ad hoc employees. Exhibit MW-4 which was issued on 16th October, 1979 which is the termination order and was subsequently withdrawn, contains the stipulation that the workman was to be paid one month salary in lieu of notice. Prior to the termination of the workman, the workman was issued chargesheet Exhibit MW-5. The previous conduct of the management does show that the workman was not being treated an ad hoc employee. The management made use of the terms and conditions contained in the appointment letter in dispensing with the services of the workman. Though the services of the workman have been terminated on a charge of misconduct which from the oral testimony of the witness MW-2 Shri Kalyan Singh is not established as no motive for an assault on him was given and the whole story related by him is incredible and has not been corroborated by the supervisor watch and ward who went with Shri Kalyan Singh to the spot of occurrence and who was a material witness. The charge levelled against the workman has not been proved before me nor an enquiry was held by the management. The Act of termination seems to be arbitrary exercise of powers vested in the management under the contract service in the garb of discharge simpliciter further leading me to infer that the management was having malafide intentions to victimise the workman on account of his union activities. The workman has also completed two and a half year of continuous service and it has not been established that the workman was paid service compensation at the time of his termination. It is well settled law that every termination is retrenchment except by way of punishment. The order of termination Exhibit MW-8 is no more than retrenchment. The conditions as laid down in section 25F have not been followed.

On this count also the order of termination cannot be held to be lawful nor in accordance with the university rules, the principles of natural justice have been violated and the management has taken recourse to unfair labour practice as there was not a single instance when service of an employee had been terminated without any enquiry after serving the chargesheet and as such without affording a reasonable opportunity to the workman and to condemn him unheard. I am least satisfied by the justification given by the management and am constrained to hold that the termination order of the workman is neither lawful nor in order, the same is accordingly set aside. I give my award that the workman is entitled to reinstatement with continuity of service and with full back wages. No order as to costs. The reference is answered and returned accordingly.

The 28th February, 1982

BANWARI LAL DALAL,

Presiding Officer,
Labour Court Haryana, Rohtak.

Endorsement No. 720, dated the 3rd March, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court Haryana, Rohtak.

H. L. GUGNANI,

Commissioner and Secretary to
Government Haryana,
Labour and Employment Department.